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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,265	12/03/2001	Masatsugu Maeda	14875-096001/C2-105DP1P	5055
26161	7590	07/30/2007		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER WEHBE, ANNE MARIE SABRINA	
			ART UNIT 1633	PAPER NUMBER
			MAIL DATE 07/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/006,265

Applicant(s)

MAEDA ET AL.

Examiner

Anne Marie S. Wehbe

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): see attached.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1,3,5,7 and 20-23.
Claim(s) objected to: _____.
Claim(s) rejected: 2,4,6 and 8.
Claim(s) withdrawn from consideration: 9-19 and 28-31.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Attachment to Advisory Action

5. cont. Applicant's amendment canceling claims 24-27 overcomes the previous grounds of rejection of these claims under 35 U.S.C. 112, first paragraph, for lack of enablement.

11. cont. The amendment to claim 2, deleting SEQ ID NO:17 as an embodiment of the claim, fails to overcome the rejection of claims 2, 4, 6, and 8 under 35 U.S.C. 102(e) over U.S. Patent No. 6,747,137, Weinstock et al. The applicant argues that as the claims are now limited to fragments of SEQ ID NOS 2 or 4, the rejection has been overcome. However, SEQ ID NO:3111 of Weinstock et al. continues to anticipate the claims as written. The same 9mer sequence taught by Weinstock is present not only in SEQ ID NO:17, but also in SEQ ID NOS: 2 and 4, see attached alignments. Thus, deleting SEQ ID NO:17 does not overcome this grounds of rejection, as it applies equally to nucleic acids encoding a fragment of at least 7 amino acids of SEQ ID NOS: 2 and 4 as well.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, **the new technology center fax number is (571) 273-8300**. Please note that all official communications and responses sent by fax must be directed to the technology

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center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197.

Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

/Anne Marie S. Wehbé/
Primary Examiner, A.U. 1633

Sequence 3111, Application US/09248796A
 ; Patent No. 6747137
 ; GENERAL INFORMATION:
 ; APPLICANT: Keith Weinstock et al
 ; TITLE OF INVENTION: NUCLEIC ACID AND AMINO ACID SEQUENCES RELATING TO CANDIDA
 ALBICANS
 ; TITLE OF INVENTION: FOR DIAGNOSTICS AND THERAPEUTICS
 ; FILE REFERENCE: 107196.132
 ; CURRENT APPLICATION NUMBER: US/09/248,796A
 ; CURRENT FILING DATE: 1999-02-12
 ; PRIOR APPLICATION NUMBER: US 60/074,725
 ; PRIOR FILING DATE: 1998-02-13
 ; PRIOR APPLICATION NUMBER: US 60/096,409
 ; PRIOR FILING DATE: 1998-08-13
 ; NUMBER OF SEQ ID NOS: 28208
 ; SEQ ID NO 3111
 ; LENGTH: 597
 ; TYPE: DNA
 ; ORGANISM: Candida albicans
 US-09-248-796A-3111

Alignment Scores:

Pred. No.:	5.45	Length:	597
Score:	9.00	Matches:	9
Percent Similarity:	100.00%	Conservative:	0
Best Local Similarity:	100.00%	Mismatches:	0
Query Match:	1.38%	Indels:	0
DB:	4	Gaps:	0

US-10-006-265-2 (1-652) x US-09-248-796A-3111 (1-597)

Qy	80	AsnCysThrThrAsnSerSerThrSer	88
Db	81	AACTGTACCACCAACAGCAGCACTAGC	55

US-09-248-796A-3111/c
 ; Sequence 3111, Application US/09248796A
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 ; SEQ ID NO 3111
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 ; TYPE: DNA
 ; ORGANISM: Candida albicans
 US-09-248-796A-3111

Alignment Scores:

Pred. No.:	2.24	Length:	597
		Page 1	

		10006625notes.txt	
Score:	9.00	Matches:	9
Percent Similarity:	100.00%	Conservative:	0
Best Local Similarity:	100.00%	Mismatches:	0
Query Match:	3.57%	Indels:	0
DB:	4	Gaps:	0

US-10-006-265-4 (1-252) x US-09-248-796A-3111 (1-597)

Qy	80	AsnCysThrThrAsnSerSerThrSer	88
Db	81	AACTGTACCACCAACAGCAGCACTAGC	55